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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,475	12/14/2001	Geoffrey H. Jenkins	U0131.70009US00	5215

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EXAMINER	
MCKANE, ELIZABETH L	

ART UNIT	PAPER NUMBER
1744	

MAIL DATE	DELIVERY MODE
07/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/017,475

Applicant(s)

JENKINS ET AL.

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11, 12, 18, 23-25, 27 and 48-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 11, 12, 18 and 50-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-25, 27 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>06222007</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

Art Unit: 1744

1. Applicant's traversal of the Restriction Requirement in the reply filed 19 March 2007 is acknowledged. The traversal is on the grounds that the subject matter of Groups I-IV has been extensively searched and examined. This is not found persuasive. In fact, whether or not claims have been previously searched does not bear upon the propriety of a restriction requirement. A restriction requirement may be made "at any stage of prosecution up to final action." See MPEP 811.02. In the instant case, the Examiner admits that a Restriction Requirement *should have been made earlier* in prosecution. Out of courtesy to applicant, one was not made earlier. However, it is now clear from the divergence of the instant claimed subject matter that the thorough examination of all four groups presents a burden to the Examiner and would result in an inadequate examination.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim recites that the "movable member is constructed and arranged to move to the closed position in response to an object moving against the movable member *as the movable member is moved to the closed position.*" In other words, the movable member moves as the

movable member is moved. The movement of the movable member is being defined by it's own movement. This limitation renders the claim vague and indefinite.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25, 27, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. (JP 06-154299).

Yoshida et al. teaches a device including a housing **7** having an opening for receiving an object **E** to be sterilized; two movable members **5,6** movable between an opening position and a closed position in response to the object being received within the opening; an ultraviolet light source **8** within the housing **7**; and an actuator that prevents the ultraviolet light source from emitting ultraviolet radiation until a detector **10** detects that the object **E** is within the opening of the housing and the movable member is in the closed position. A light seal **11** will substantially block light output from the light source **8** from exiting the housing. See machine translation, paragraphs [0016]-[0019]. It is noted that when/if the object exerts a force on the movable member when being received in the opening, it will necessarily be detected by detector **10**, thus meeting the claim limitation “wherein the at least one movable member is constructed and arranged to move between the open position and the closed position in response to the object

Art Unit: 1744

exerting a force on the at least one movable member when the object is at least received within the opening.”

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakurai et al. (US 4,772,795) in view of Yoshida et al..

Sakurai et al. discloses a UV sterilizer for dental instruments. The device includes a housing 1 having an opening for at least partially receiving an object and a plurality of movable members 9 pivotally mounted to the housing for moving between an open and a closed position, wherein the movable members are attached to the housing in both the open and the closed position. The movable members are constructed and arranged to be moved from the open position to the closed position as an object is placed within the housing when the lever 12a is actuated. UV lamps 5a,5b are located within the housing for irradiating an object placed therein while a detector 21 detects when the movable members are in the closed position and permits activation of the UV lamps only when the movable members are in the closed position. See col.3, lines 40-50; col.4, lines 35-48; Figure 2. Sakurai et al. does not disclose a detector for detecting the presence of an object within the housing.

Art Unit: 1744

Yoshida et al. also teaches a sterilizer for dental instruments **E** wherein a detector **10** located at the entrance of the housing detects the presence of the instrument **E** within the housing and automatically closes movable members **5,6** in response. Once the movable members **5,6** are in the closed position, the UV lamp **8** is activated for a predetermined period of time. See machine translation, paragraphs[0016]-[0019]. It would have been obvious to place a detector in the entrance of the housing of Sakurai et al. in order to automate the opening and closing of the movable members **9**, thus preventing an occurrence of operator error. A detector in the entrance of the Sakurai et al. housing would result in the movable members closing when an object moves against the movable members.

Claim Objections

5. Claim 27 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 27 depends from cancelled claim 26. It has been treated as if it depends from claim 25. Correction is required..


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

Art Unit: 1744

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leigh McKane
Primary Examiner
Art Unit 1744

elm
10 July 2007